

SECRETARIAT

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FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

FIRST GENERAL COUNSEL'S REPORT

SENSITIVE

MUR: 5400
DATE COMPLAINT FILED: December 30, 2003
DATE OF NOTIFICATION: January 7, 2004
DATE ACTIVATED: May 10, 2004

EXPIRATION OF SOL: October 8, 2008

COMPLAINANT: Barbara M. Boyd

RESPONDENTS: LaRouche Watch
Red Letter Press and Helen Gilbert, as registered agent

**RELEVANT STATUTES
AND REGULATIONS:**

2 U.S.C. § 431(4)(A)
2 U.S.C. § 431(8)(A)
2 U.S.C. § 431(9)(A)
2 U.S.C. § 433(a)
2 U.S.C. § 434(a)
2 U.S.C. § 441a(a)(1)(C)
2 U.S.C. § 441b(a)
2 U.S.C. § 441h
11 C.F.R. § 110.16
11 C.F.R. § 114.2

INTERNAL REPORTS CHECKED: None

FEDERAL AGENCIES CHECKED: None

I. INTRODUCTION

Complainant, Barbara M. Boyd, a supporter of presidential candidate Lyndon H. LaRouche, Jr. ("LaRouche"), asserts that an Internet chat group called LaRouche Watch may be in violation of the registration and reporting requirements of 2 U.S.C. § 433(a), that individuals who contributed funds to it in excess of the statutory limitation at 2 U.S.C. § 441a(a)(1)(C) are in violation of the Federal Election Campaign Act of 1971, as amended (the "Act"), that Red Letter Press, and Helen

Gilbert, as registered agent ("Red Letter Press"), made a corporate contribution to LaRouche Watch in violation of 2 U.S.C. § 441b(a), and that individuals associated with LaRouche Watch may have been engaged in fraudulent misrepresentation of LaRouche.

This Office recommends that the Federal Election Commission ("Commission") find no reason to believe that LaRouche Watch or Red Letter Press violated the Act and close the file. The complaint's allegations against LaRouche Watch consist of speculation unsupported by specific evidence of violation. For its part, Red Letter Press conclusively refuted the allegations that it made a corporate contribution to LaRouche Watch.

II. FACTUAL AND LEGAL ANALYSIS

A. Background

The complaint alleges that LaRouche Watch is an Internet chat group formed for the purpose of infiltrating and harassing LaRouche's presidential campaign. The complaint states that "to the extent" that LaRouche Watch engaged in these activities and expended more than \$1,000, it became subject to the registration and reporting requirements for a political committee and its failure to register or file with the Commission thus places it in violation of 2 U.S.C. § 433(a).¹ One of the LaRouche Watch website links takes the viewer to the website of Red Letter Press and an order form for one of its booklets, *Fascism Restyled for the New Millennium*. The complaint points to the LaRouche Watch link to Red Letter Press, a Washington state corporation, and asserts that the relationship between the two "raises the suspicion that to the extent that" Red Letter Press subsidized LaRouche Watch, Red Letter Press made a corporate contribution to, or expenditure on behalf of, a political committee in violation of 11 C.F.R. § 114.2.² The complaint charges that, "to the extent"

¹ Failure to register with the Commission as a political committee constitutes a violation of 2 U.S.C. § 433(a) and failure to file reports of receipts and disbursements constitutes a violation of 2 U.S.C. § 434(a).

² In addition, 2 U.S.C. § 441b(a) prohibits corporate contributions in connection with elections for political office.

1 that individuals made contributions to LaRouche Watch in excess of the statutory limit at 2 U.S.C. §
2 441a(a)(1)(C), those individuals violated the law.

3 Finally, the complaint asserts that, "to the extent" that individuals associated with LaRouche
4 Watch are candidates or involved with candidates for the Democratic or Republican presidential
5 nomination, and cause the LaRouche campaign to be infiltrated, and cause statements to be made that
6 do not represent LaRouche's position, then these individuals have engaged in fraudulent
7 misrepresentation in violation of 11 C.F.R. § 110.16.³ In support, the complaint enclosed printed
8 versions of several LaRouche Watch website pages and links. In a passage from one of those pages,
9 LaRouche Watch tells its supporters to "[b]e kind of crazy when you are working with [members of
10 the LaRouche organization]. Tell people you meet on the street that we have to get rid of all the
11 liberals because they impede American progress and stuff like that." See Complaint, Exhibit B, page
12 3, paragraph 6.

13 We were unable to identify the individual(s) who created LaRouche Watch, or the head of the
14 organization or any of its members and so were unable to inform the group that a complaint had been
15 filed against it or notify it of its opportunity to respond.

16 Helen Gilbert, the Managing Editor of Red Letter Press and the author of *Fascism Restyled*
17 *for the New Millennium*, filed an affidavit in response to the complaint in which she stated that Red
18 Letter Press has made no contribution to LaRouche Watch, financial or otherwise. She denied that
19 Red Letter Press expended "funds, labor or anything of value towards the development and
20 maintenance" of the website. She stated: "No proceeds from the sale of any copies of my booklet go
21 to LaRouche Watch, and no copies of the booklet have been provided to LaRouche Watch for

³ Fraudulent misrepresentation by a candidate, or employee or agent of a candidate, of another candidate that is damaging to that other candidate also constitutes a violation of the Act at 2 U.S.C. § 441h.

1 resale." In fact, Ms. Gilbert asserted that she did not know that her booklet was listed on the
2 LaRouche Watch website until she received a copy of the complaint from the Commission.

3 **B. Analysis**

4 **1. Political Committee Status and Excessive Contributions**

5 The Act requires political committees to register and report to the Commission. 2 U.S.C.
6 §§ 433(a) and 434(a). A political committee is defined as any group of persons that makes
7 expenditures or receives contributions aggregating in excess of \$1,000 during a calendar year.
8 2 U.S.C. § 431(4)(A). "Contribution" and "expenditure" are defined as acts taken "for the purpose of
9 influencing any election for Federal office." 2 U.S.C. §§ 431(8)(A) and (9)(A). The courts have
10 placed a limiting construction on these statutory provisions such that "political committee"
11 obligations may only be imposed, with respect to groups acting independently of candidates or
12 parties, upon organizations whose major purpose is campaign activity, such as the nomination or
13 election of a candidate." *See, e.g., Buckley v. Valeo*, 424 U.S. 1, 79 (1976); *FEC v. Massachusetts*
14 *Citizens for Life, Inc.*, 479 U.S. 238, 262 (1986).

15 The LaRouche Watch website, established in October 2003, describes itself as "[t]he
16 group to legally crush" the LaRouche Movement. <http://www.geocities.com/larouchewatch/>
17 (last accessed September 21, 2004). It contains links to a chatroom, a guestbook, and articles
18 and publications critical of LaRouche, including a link to a Red Letter Press order form for
19 *Fascism Restyled for the New Millennium*. The order form describes the publication as a
20 "brief but detailed study [that] exposes LaRouche's origins and current stance on key issues,
21 and shows how he is using classic fascist manipulation and scapegoating to recruit the
22 disaffected." <http://www.redletterpress.org/bookstore/larouche.html> (last accessed September
23 21, 2004).

1 Our examination of the LaRouche Watch website revealed no evidence that LaRouche Watch
2 received contributions or made expenditures of over \$1,000 during either 2003 or 2004. It does not
3 solicit contributions; it does not appear to have received any contributions; and it does not appear to
4 have engaged in any activities that would result in expenditures sufficient to trigger political
5 committee status.⁴ Disbursements incurred for the purpose of setting up and maintaining the website
6 are minimal: it costs \$15 to set up a website on the internet service provider LaRouche Watch uses
7 and, at most, \$11.95 a month to maintain it. See Attachment 1, Geocities Homepage, *The Way to*
8 *Build a Better Website*, <http://www.geocities.yahoo.com> (last accessed September 21, 2004). At this
9 rate, LaRouche Watch would have spent a total of \$146.45 for setting up and maintaining its website
10 for the period October 2003 through mid-September 2004.

11 In order to meet the Act's \$1,000 threshold, the complaint appears to rely on the theory that
12 Red Letter Press made a corporate contribution to LaRouche Watch in connection with sales of Helen
13 Gilbert's booklet, *Fascism Restyled for the New Millennium*. However, Helen Gilbert, the Managing
14 Editor of Red Letter Press and the author of the booklet at issue, submitted a sworn affidavit denying
15 any contribution to LaRouche Watch. See Statement of Reasons of Commissioners Thomas, Wold,
16 Elliott, McDonald, Mason and Sandstrom in MUR 4852 (Jorg Wiebe, issued on February 5, 1999)
17 (respondent's submission of prima facie evidence which refuted violation of the Act supported
18 Commission's finding of no reason to believe violation committed).

19 Accordingly, this Office recommends that the Commission find no reason to believe that
20 LaRouche Watch qualifies as a political committee and thus no reason to believe that it violated 2
21 U.S.C. §§ 433(a) and 434(a) by failing to register or file with the Commission. See Statement of

⁴ We were not able to review the discussions that took place in the LaRouche Watch chat group, an internet mechanism for electronic conversation. Access to the chat group is limited to members. However, the chat group's webpage showed that between October 2003 and September 2004, the chat group entertained a total of 136 messages, with the highest number of messages, forty-eight, registered during the month of April 2004. This relatively small number of messages suggests that LaRouche Watch's activity is similarly circumscribed.

1 Reasons of Commissioners Mason, Smith, Sandstrom and Thomas in MUR 4960, at p. 3 (Hillary
2 Rodham Clinton for US Senate Exploratory Committee, issued December 21, 2000) (“[P]urely
3 speculative charges, especially when accompanied by a direct refutation, do not form an adequate
4 basis to find reason to believe that a violation of the FECA has occurred.”).⁵ Because there is no
5 reason to believe that LaRouche Watch qualifies as a political committee, the contribution limits at 2
6 U.S.C. § 441a(a)(1)(C) do not apply and thus there is no reason to believe any person made an
7 excessive contribution to LaRouche Watch. Finally, based on Red Letter Press’ response to the
8 complaint, we recommend that the Commission find no reason to believe that Red Letter Press made
9 a corporate contribution to LaRouche Watch in violation of 2 U.S.C. § 441b(a).

10 **2. Fraudulent Misrepresentation**

11 While the complaint asserts that individuals associated with LaRouche Watch engaged in
12 fraudulent misrepresentation of LaRouche, it puts forward no evidence in support of its claim. In
13 order for an individual to violate 2 U.S.C. § 441h, first, there must be some communication; the
14 communication must contain fraudulent misrepresentations; and it must be made by candidates or
15 employees or agents of a candidate. Because the complaint proffers no evidence establishing these
16 elements of the violation, in particular, that the alleged misrepresentation was made by a candidate or
17 an employee or agent of a candidate, we recommend the Commission find no reason to believe that
18 there has been any violation of 2 U.S.C. § 441h. *See* Statement of Reasons in MUR 4960 (Hillary
19 Rodham Clinton).

20 **III. RECOMMENDATIONS**

- 21 1. Find no reason to believe that LaRouche Watch violated the Federal Election
22 Campaign Act of 1971, as amended, or Commission regulations in connection with
23 this matter.

⁵ *See also*, Statement of Reasons of Commissioners Wold, Mason and Thomas in MUR 4850, at p. 2 (Committee to Re-elect Fossella, issued July 20, 2000) (“A mere conclusory accusation without any supporting evidence does not shift the burden of proof to respondents.”).

2. Find no reason to believe that Red Letter Press, and Helen Gilbert as its registered agent, violated the Federal Election Campaign Act of 1971, as amended, or Commission regulations in connection with this matter.
3. Find no reason to believe any violation of 2 U.S.C. §§ 441a(a)(1)(C) or 441h occurred in connection with the allegations raised in the complaint in this matter.
4. Approve the appropriate letters.
5. Close the file.

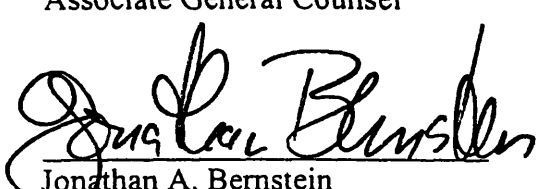
Lawrence H. Norton
General Counsel


Rhonda J. Vosdingh
Associate General Counsel

9/23/04

Date

BY:


Jonathan A. Bernstein
Assistant General Counsel


Beth N. Mizuno
Attorney

Attachment

1. Geocities Homepage, *The Way to Build a Better Website*, <http://www.geocities.yahoo.com> (last accessed September 21, 2004).

Welcome, bethmizuno
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